HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.2317 of 2005

Between:

G.Janakamma W/o G.Rami Reddy
Aged 65 years Occ: Household and others

…Appellants

AND

The Commissioner, Land Revenue, Hyderabad and 4 others

….Respondents

:: JUDGMENT ::

Counsel for the Appellants: Sri B.Vijaysen Reddy

Counsel for Respondent Nos.1
to 4: Government Pleader for Revenue

Counsel for respondent No.5: Sri J.Prabhakar

June 22nd, 2006

Per G.V.Seethapathy, J

This appeal is directed against order dated 10-11-2005 passed by the learned Single Judge whereby he dismissed Writ Petition No.24035 of 2005 filed by the appellants for quashing orders dated 24-9-1998 and 30-9-2005 passed by Mandal Revenue Officer, Khammam (Urban) and Commissioner, Appeals (Andhra Pradesh) respectively.

The appellants claim that the land admeasuring Ac.55-29 gts comprised in Survey No. 49 of Dhamsalapuram Village has been in the possession of their family since the time of their forefathers who were recorded in the village records as occupants of the land. They further claim that when the Jagir Administrator declared the said land, which formed part of a total extent of Ac.694-22 guntas of inam land, as unoccupied, in the year 1953, the inamdars obtained orders of release in their favour and, during preparation of Record of Rights in the year 1953, the names of the appellants' predecessors were mentioned as actual occupants of the land in the village records. When the inamdars sought to get the names of the occupants removed from the Record of Rights and wanted to get their names included, the occupants preferred an appeal before the Board of Revenue, which was allowed and the matter was remanded by order dated 6-1-1960 to the first respondent for fresh enquiry. After remand, the first respondent held fresh enquiry and concluded that the appellants' forefathers were in actual possession of the land and their names were correctly recorded. In the year 1964, the inamdars filed Civil Revision Petition No. 1 of 1964 before the first respondent under Section 15 (2) of the

Andhra Pradesh (Telangana Area) Record of Rights in Land Regulation, 1358 Fasli seeking correction of the entries and deletion of the names of the occupants. The same was dismissed by the first respondent vide his order dated 9-10-1964.

In 1996, Mandal Revenue Officer, Khammam (Urban), Khammam (3rd respondent) issued notices to the petitioners under Section 7 of the Andhra Pradesh Land (Encroachment) Act, 1905 (for short 'the Act'). They challenged the same in Writ Petition No.1430 of 1996, which was disposed of by this Court on 1-11-1997 by giving them liberty to submit explanation with a direction to the third respondent to dispose of the same. In furtherance of the direction given by the Court, the appellants filed objections against the show cause notices. After considering the same, the 3rd respondent passed order dated 24-9-1998 for their eviction. The appeal preferred by the appellants against the order of eviction was dismissed by Revenue Divisional Officer, Khammam (Urban), Khammam (4th respondent) and revision filed by them was dismissed by the Joint Collector vide his order dated 16-8-2004. Further revision filed before the Commissioner, Appeals was also dismissed vide order dated 30-9-2005.

The appellants challenged orders dated 24-9-1998 and 30-9-2005 in Writ Petition No. 24035 of 2005. They relied on orders dated 18-12-1960 and 9-10-1964 passed by the Commissioner of Land Revenue, Hyderabad (1st respondent) and pleaded that once the authorities have recognized their family as lawful occupants of the premises, 3rd respondent could not have initiated proceedings under the Act, and, in any case, order for their eviction could not have been passed without objectively considering their explanation. The appellants further averred that the land in question is an inam land

and, therefore, the provisions of the Act cannot be invoked for their eviction.

In the counter filed on behalf of the respondents, it was averred that land measuring Ac.65-29 guntas was recorded as “Gramasamohi” and the same vested in the government. It was further averred that the appellants have unlawfully encroached the government land and, therefore, proceedings under the Act were rightly initiated against them.

The learned Single Judge dismissed the writ petition by observing that in Survey No.49 of Dhamasalapuram Village, land measuring Ac.65-29 gts was also treated as “Gramasamohi” land, which vested in the government and, therefore, the possession of the writ petitioners (appellants) was illegal warranting their eviction by invoking the provisions of the Act.

Learned counsel for the appellants strongly relied on orders dated 18-12-1960 and 9-10-1964 passed by the competent authorities and argued that his clients could not have been treated as unauthorized occupants of government land because the possession of their family had been recognized as early as in 1960. He emphasized that the predecessors of the appellants were in continuous possession and enjoyment of the lands since 1963 and their names were entered in the Record of Rights and, therefore, the 3rd respondent gravely erred by treating them as unauthorized occupants. In support of this contention, learned counsel for the appellants relied on the observations contained in order dated 9-10-1964 passed by District Collector, Khammam dismissing the revision filed by the inamdars.

During the pendency of the writ petition, Andhra Pradesh Housing Board (for short ‘the Board’) got itself impleaded as 5th

respondent.

Learned counsel appearing for the Board and the learned Government Pleader supported the orders under challenge and argued that the appellants do not have any semblance of right to continue to occupy the government land and the concerned authority did not commit any illegality by ordering their eviction. Learned counsel for the Board emphasized that the land in dispute had been allotted to the Board on payment of Rs.7.5 lakhs per acre and the same is likely to be used for raising a housing colony.

We have thoughtfully considered the respective arguments. It is to be noted that the copy of order dated 9.10.1964 in C.R.P.No.1 of 1964, which is the only document filed and strongly relied upon by the appellants does not make any mention about the survey number or the extent of the land in respect of which the occupancy of the respondents therein is said to be recognized. That order makes reference only to the name of the village as Seetharampuram H/o. Dhamsalapuram. It is not disputed that the total extent of the village is Ac.694.22 gts and the dispute is in respect of only Ac.65.29 gts in Sy.No.49 which, according to the respondents herein, is recorded as `Gramasamohi'. It is also not disputed and is borne out from order dated 24-9-1998 passed by the 3rd respondent that the appellants are in possession of agricultural lands in different survey numbers of the village and they are in possession of that land. It is therefore not possible to accept the arguments of the learned counsel for the appellants that his clients have the rightful claim over Ac.65-29 gts. comprised in Survey No.49.

It is not the case of the appellants that any patta was granted in their favour or in favour of their predecessors at any time in respect of the subject land. Therefore, it can be said that the appellants were never in occupation of the subject land as title holders. In para 4 of the affidavit filed in support of the writ petition, it was averred that some of

the petitioners were also granted ryotwari pass books under A.P.Rights in Land and Pattedar Pass Books Act, 1971. A similar representation was made before this Court on 29.11.2005 seeking seven days time to produce the said passbooks. However, no such ryotwari passbooks were produced. On the other hand, the petitioners appear to have submitted a representation to the government on 15.2.2006, a copy of which was filed by the 5th respondent as an additional material paper, wherein the appellants made a request for grant of occupancy rights certificate under the Inams Abolition Act, 1955. The said representation was filed subsequent to the dismissal of the writ petition and during the pendency of the writ appeal. The government, while calling for a report from the first respondent, curiously ordered stay of the proceedings dated 30.9.2005 of the first respondent which is, in fact, impugned in the writ petition. Be that as it may, the very conduct of the appellants in submitting the representation to the government for grant of occupancy rights certificate exposes the hollowness of their claim, as set out in the writ petition. In our opinion, the appellants have failed to establish that they were in possession and enjoyment of the subject land since 1953, as claimed by them as title holders or otherwise. As could be seen from the orders of the respondent Nos. 1 to 4, some of the appellants claimed that their forefathers purchased certain parts of the land in Sy.No.49 from the inamdars, but the said claim of purchase was never substantiated.

A perusal of the orders impugned in the writ petition shows that land in Survey No.49 comprising of Ac.65-29 gts was also treated as 'Gramasamohi' and entered as such in the pattedar column of the pahanis. Even while confirming the rights of the actual occupant in respect of rest of the land in the inam village by District Collector,

Khammam, vide his order dated 18-12-1960 and 9-10-1964, there was no mention of a specific occupant of Survey No.49. It is not disputed that `Gramasamohi' lands are vested in the Government and reserved for communal purpose and no person can be given a certificate of occupancy in respect of such lands and in fact no such certificate of occupancy was given to any person in respect of subject land in Sy.No.49. It can also be seen from the order of the 4th respondent passed in appeal against the order of the third respondent that previously the 4th appellant/writ petitioner who was a former Sarpanch of Dhamsalapuram village submitted a representation to the government stating that Sy.No.49 of Dhamsalapuram village is a `Gramasamohi' land and seeking assignment of an extent of 30 acres of it in favour of poor persons belonging to the Scheduled Castes/Scheduled Tribes of the village. This specifically negates the claim of the appellants.

The judgments of the Supreme Court in **Govt. of Andhra Pradesh v. T.Krishna Rao**[1] on which strong reliance has been placed by the learned counsel for the appellants in support of his argument that the long possession of the land carries with it a presumption of title and, therefore, the government cannot resort to summary procedure for eviction under the Act does not have any bearing on the present case. In that case, the Supreme Court held as under:

> "The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary enquiry contemplated by Sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to family of

> Nawab Habibuddin from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit".

The above decision is not applicable to the facts of the present case for the simple reason that, in the said case, admittedly, the property originally belonged to the family of Nawab Habibuddin from whom the respondents therein claimed to have purchased. Further, the dispute therein was whether the land was included in the acquisition notified by the Government of Nizam, the Osmania University contending that they were included in the notification and acquired for its benefit and the Nawab Habibuddin contending that the disputed three plots were not acquired. On the facts of the above case, it was held that the respondents therein had *bona fide* claim to litigate and they cannot be evicted save by the due process of law and summary remedy prescribed by Section 6 is not the kind of legal process which suit for adjudication of complicated questions of title. In the present case, there is no such *bona fide* dispute as to title. Hence, the decision relied upon by the learned counsel for the appellant is not applicable.

Likewise, the judgment of the Division Bench of this Court in **The Special Dy. Collector Vs. Konda Lakshman Bapuji**[2] is clearly distinguishable. In that case, the petitioners have claimed that their possession was as permanent lessees under registered lease deeds, whereas the government contended that part of those lands belong to government. Since it was found on facts of that case that there was *bona fide* dispute of title between the Government and the writ petitioners, it was held that it was proper to adjudicate the same by

ordinary courts of law.

Thus, the above two decisions rendered on the facts pertaining to those respective cases have no application to the present case where the appellants/petitioners failed to establish their claim of possession of the subject land in Sy.No.49 and, on the other hand, the said land is found to be “village Samohi” land reserved for communal purposes and vested in the government. It is axiomatic that the land registered in the village records as “village samohi” remains and continues to be so and any length of illegal occupation of the same by any one even if such occupation is true does not clothe him with any rights and no patta or certificate of occupancy can be granted in his favour for the same. Unauthorised occupation of “village samohi” land vested in the government certainly calls for eviction of the encroacher therefrom and the appellants/writ petitioners who were found to be not landless poor, but ineligible encroachers were rightly ordered to be evicted by the impugned proceedings.

For the reasons mentioned above, the appeal is dismissed.

G.V.SEETHAPATHY, J

G.S.SINGHVI, CJ

22.6.2006

RAR /SVS

[1] AIR 1982 SUPREME COURT 1081

[2] 1984(1) APLJ 219